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In re Application of :
Enns, et al. :
Filed: December 2, 2003 : ON PETITION
Application No. 10/725,919 :
Atty. Dkt. No.: 0733MH-42278C :

OFFICE OF PETITIONS

This decision is in response to the "REQUEST FOR RECONSIDERATION ON PETITION," filed October 29, 2004, whereby petitioners request reconsideration on the merits of the petition filed July 12, 2004 on the grounds that the instant request now includes additional evidence, namely, a return postcard.

The application was submitted December 2, 2003. On May 12, 2004, the Office of Initial Patent Examination mailed a Notice of Incomplete Nonprovisional Application ("Notice"). The Notice indicated that the application had not been accorded a filing date because the application was deposited without drawings as required under 35 USC 113 (first sentence). The Notice indicated the filing date of the application would be date of receipt of the omitted items. Any assertion that the omitted items were in fact submitted or are not necessary for a filing date must be by way of petition.

Petitioners argue that the application, as submitted, included drawings labeled Figures 1-5. Petitioners have included a copy of the eleven (11) sheets of drawings featuring Figures 1-5. The original petition included the declaration of S. Bradshaw who declares that while having no specific recollection of filing the instant application, declarant would, as a matter of course, have ensured the drawings were filed with the application. The original petition also included the declaration of M. Hunn who declares the application as filed included a complete copy of the application, including the drawings.

Petitioners herein have submitted as evidence of receipt of the drawings a copy of a return postcard date stamped by the Office on December 2, 2003.

The arguments and additional evidence submitted by petitioners have been considered, but are not persuasive. For the reasons set forth in the decision mailed August 24, 2004, herein

incorporated by reference, petitions have failed to establish that the application as filed included the drawings in question.

Moreover, the copy of the return postcard submitted herewith does not serve as *prima facie* evidence of receipt of the drawings due to the fact that the postcard is not specifically itemized. Hence, there is no way to determine given the lack of itemization how many pages of drawings, if any, were included with the filing of the application.

Accordingly, petitioners have failed to establish that the application papers submitted December 2, 2003 included drawings.

As previously indicated, it is USPTO practice to treat a non-provisional application that contains at least some disclosure of a process or method as an application for which a drawing is not necessary. As the present application includes at least one method claim, the Notice of Incomplete Application mailed May 12, 2004 was mailed in error and was previously withdrawn.

As previously indicated, the application is entitled to a filing date of December 2, 2003 as the application was complete upon filing.

Accordingly, the petition to accord the application a filing date of December 2, 2003 is again GRANTED.

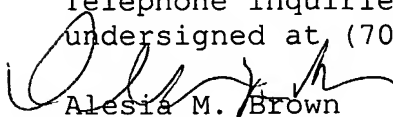
The petition for entry of the drawings as a matter of right is hereby again DISMISSED.

If deemed appropriate, petitioners are again advised to submit a second preliminary amendment prior to the issuance of the first Office action to amend the application to include Fig. 1-5.

The application has been processed with only the papers present on filing with a filing date of December 2, 2003, without drawings as part of the original disclosure.

It would not appear that this application requires further action by the Office of Petitions. Hence, the application is being returned to the Office of Initial Patent Examination for further processing with a filing date of December 2, 2003.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.


Alesia M. Brown
Petitions Attorney
Office of Petitions